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Anti-Corruption

Brazil
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BRAZIL

Law and Practice

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Contents

1. Legal Framework for Offences

1.1 International Conventions

Brazil has so far ratified several conventions related to anti-corruption, such as:

- the OECD Anti-Bribery Convention, ratified on 24 August 2000 and enacted by Decree No 3.678 on 30 November 2000;
- the United Nations Convention against Corruption, ratified on 15 June 2005 and enacted by Decree No 5.687 on 31 January 2006;
- the United Nations Convention against Transnational Organized Crime, ratified on 29 January 2004 and enacted by Decree No 5.015 on 12 March 2004; and
- the Inter-American Convention against Corruption, enacted by Decree No 4.410 on 7 October 2002.

The OECD Anti-Bribery Convention establishes standards to criminalise bribery of foreign public officials in international business transactions and provides for many related measures to advance the effectiveness of the programme.

As a result of this ratification, Brazil created, through Federal Law No 10.467, new types of crimes in the Criminal Code such as those in Articles 337-B, 337-C and 337-D, which appear as Chapter II-A (crimes committed by individuals against a foreign public administration).

Article 337-B establishes as a crime active bribery in an international business transaction, defining as an illicit act the direct or indirect promising, offering or giving of any undue advantage to a foreign public official or to a third person, aimed at having him or her put into practice, omit, or delay any official act relating to an international business transaction. The penalty varies from one to eight years imprisonment and a fine. Article 337-C provides for the crime of trafficking of influence in international business transactions, defining as an illicit act to request, require, charge or obtain, for oneself or for another person, indirectly or directly, any advantage or promise of advantage in exchange for influencing an act carried out by a foreign public official in the exercise of his or her functions related to an international business transaction. The penalty varies from two to five years' imprisonment and a fine.

In addition, Article 337-D of the Brazilian Penal Code defines a foreign public official as any individual who holds a position or a public labour bond in state bodies or in diplomatic representations of a foreign country, even though he or she is not paid for that function or it is a temporary job. Also included is the definition of foreign public official: any individual who works for an organisation controlled by a foreign country's public power or for any international public company.

Likewise, it is enough for the offence to be considered as having been committed that the action of an offer, promise or giving is made, regardless of whether the foreign public official acted in return for the bribe.

In its turn, the United Nations Convention against Corruption covers five main areas, such as preventive measures, criminalisation and law enforcement, international co-operation, asset recovery, and technical assistance and information exchange. The Convention also covers many forms of corruption acts, such as trading in influence, corruption in the private sector, bribery, and abuse of functions.

The United Nations Convention against Transnational Organized Crime is the main international instrument in the fight against transnational organised crime. The convention was a huge step in recognising the seriousness of transnational organised crimes, as well as the need to foster and enhance close international co-operation, taking a series of measures against those crimes, such as mutual legal assistance and law-enforcement co-operation, the creation of domestic criminal offences (such as money laundering, corruption, participation in an organised criminal group and obstruction of justice), the adoption of new frameworks for extradition, and technical assistance and training for upgrading the capacity of national authorities.

Last, but not least, the Inter-American Convention against Corruption was the first legal instrument which recognised the international reach of corruption and the need for states to co-operate in fighting against it. Therefore, the Convention has the purposes of promoting and strengthening the mechanisms needed to detect, prevent, punish, and eradicate corruption in each of the participating states. Also, the Inter-American Convention against Corruption has the purpose of promoting, facilitating, and regulating the co-operation among the state parties, to guarantee the effectiveness of the actions and measures related to the acts of corruption. In this sense, the Convention also establishes a list of preventive measures, the criminalisation of some acts of corruption and lists a series of provisions to strengthen the co-operation among the state parties.

1.2 National Legislation

The main national legislations are

- the Anti-Corruption Law (Law No 12.846/2013), which represents, in the civil and administrative scope, an important advance in providing for strict liability for companies that commit harmful acts against the national or foreign public administration;

- Decree No 8.420/2015, which regulates the Anti-Corruption Law;
- the Penal Code, which provides for subject liability for individuals on the main crimes of active corruption in Article 333 and passive corruption in Article 317; and
- the Administrative Improbity Law (Law No 8.429/92), which provides for sanctions applicable to public agents in cases of unlawful enrichment in the exercise of mandate, position, job, or function in the direct, indirect, or foundational public administration. Therefore, all relevant offences are laid down across multiple sources.

The Anti-Corruption Law was designed to address corruption in business transactions carried out by foreign entities that operate in Brazil and by Brazil-based entities. Not only focused on corruption: to promise, offer or give, directly or indirectly, an undue advantage to a public official/related third party, the Anti-Corruption Law also prohibits several other acts, such as:

- to defraud, by any method, the competitiveness of a public bidding procedure;
- fraudulently to obtain an undue advantage or benefit from an administrative contract, without authorisation under the law/the related contractual instruments/bidding process;
- to manipulate or defraud the economic-financial balance of an administrative contract; and
- to inhibit investigations carried out by public entities.

The commitment of any of these acts may subject a legal entity to severe sanctions. At the administrative level, companies are exposed to fines ranging from 0.1% to 20% of their gross annual revenue, and special public disclosure of the decision. At the civil level, legal entities may be compelled to forfeit assets and rights obtained by means of corrupt acts, their business activities can be suspended, they may be prohibited from receiving subsidies, donations, incentives or loans from public entities, and they may even be compulsorily extinguished.

The Penal Code regulates the crimes of passive and active corruption, in which both crimes must affect the public interest and involve public authorities/someone invested with public authority. Article 317 of the Brazilian Penal Code states that any public official who solicits or receives an undue advantage, for others or for himself or herself, directly or indirectly, or who accepts the promise of it, commits the crime of passive corruption. The penalty for passive corruption varies from two to 12 years imprisonment and a fine – which can be increased by a third if the person actually carries out an omission or act related to the public function in exchange for the solicited, accepted or received advantage.

Active corruption, according to Article 333 of the Brazilian Penal Code, incriminates whoever offers or promises an undue advantage to a public official to delay or to omit an official act. In this case, the penalty ranges from two to 12 years imprisonment and a fine, that can be increased by a third if the criminal act is carried out by the public official.

Besides the sanction for receiving or soliciting an undue advantage, the Brazilian Penal Code also sets out as a criminal offence the act of exacting, forcefully or with the use of violence, an undue advantage even when off duty or before taking over the position (Article 316). The penalty for exaction varies from two to eight years imprisonment and a fine.

In the set of legal instruments combating corruption, the Administrative Improbity Law (Law No 8.429/1992) regulates acts of improbity – direct, indirect, or foundational – performed by public agents against the public administration, at the federal, state, and municipal levels. In this regard, it is important to highlight Article 9 (which describes the acts of administrative improbity arising from illicit enrichment), Article 10 (which describes the acts of administrative improbity that cause damage to the national treasury) and Article 11 (which describes the acts of administrative improbity that attempt to go against the principles of the Brazilian Public Administration) of the referred legal provision.

According to Article 9 of the Brazilian Administrative Improbity Law, the acts of administrative improbity arising from illicit enrichment to obtain any kind of undue patrimonial advantage are:

- to receive, for himself or herself, or someone else, money, or any other direct or indirect economic advantage, as commission, percentage, gratification or gifts from whomever has direct or indirect interest and may be reached by or benefited from acts or omissions resulting from the public official's duties;
- to receive direct or indirect economic advantage to facilitate the acquisition, exchange or rent of a movable or immovable asset or the hiring of services by the entities at a price higher than the average established by the market;
- to receive direct or indirect economic advantage to facilitate the alienation, exchange or rent of a public asset or the providing of service by a public body at a price lower than the usual established by the market;
- to use, in private construction or service, vehicles, machinery, equipment or material of any kind, which is owned or is at the disposal of any of the public entities, or its public officials, employees and third parties;
- to receive direct or indirect economic advantage of any kind to tolerate the exploitation or the perpetration of gambling,

practising or promoting prostitution, drug-trafficking, smuggling, or any kind of illicit activity or to accept a promise of any such advantage;
- to receive direct or indirect economic advantage to make a false statement about the measuring or assessment in public construction or any other service or about the quantity, weight, measure, quality or feature of the products provided to any public entities;
- to acquire for himself or herself or a third party in the exercise of a publicly related function, assets of any nature in which the price is disproportionate to the evolution of estate or to the civil servant's income;
- to take a job, a commission or to perform a consulting activity for individuals or legal entities whose interests may be prejudiced or benefited by acts or omissions resulting from the attributions of the public agent during the activity;
- to receive economic advantage to intermediate the clearance or the investment of public money of any nature;
- to receive direct or indirect economic advantage for the omission of an official act, an arrangement or a declaration;
- to incorporate estate assets, income, revenue or funds which belong to the patrimonial estate of the public entities; and
- to use to his or her own benefit assets, incomes, revenue or funds which belong to the patrimonial estate of the public entities.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

In Brazil, there are no specific guidelines produced for the interpretation and application of national legislation. However, Decree No 8.420/2015 regulates several aspects of the Anti-Corruption Law, such as criteria for the calculation of fines, parameters for evaluating compliance programmes, rules for entering into leniency agreements and provisions on the national registers of punished companies. These procedures are under the responsibility of the General Comptroller's Office (CGU), the administrative body responsible for enforcing the Decree at the federal administration level.

It is important to mention that, with regard to anti-bribery integrity/compliance programmes, the Decree defines 16 elements which create a complete programme.

The Decree not only lists many acts that are considered harmful to the public administration, such as fraud, obstruction of government investigations, and bribery, but also provides for strict liability for companies that benefit from violations, as companies can face investigations of potential violations by the illicit acts of their own employees or of their third-party intermediaries.

1.4 Recent Key Amendments to National Legislation

No key amendments have been made to the national legislation in 2020.

2. Classification and Constituent Elements

2.1 Bribery

In Brazil, criminal liability for corruption and bribery acts is mainly governed by the Criminal Code, which establishes the offences committed by public officials and private individuals against the public administration. The Brazilian statute that criminalises bribery of both foreign and domestic public officials is the Criminal Code, amended in 2002 to include foreign public officials, in compliance with the OECD Convention.

Passive or active bribery is a corruption crime defined by the Criminal Code, which prescribes two to 12 years of imprisonment and a fine for (i) any public official who directly or indirectly requests or receives an improper advantage, or accepts the promise of such an advantage, for himself or herself or others, even if this occurs outside the function of the official's office or before the office has been assumed, or (ii) any private person who offers or promises an improper advantage to a public official to induce the latter to perform, omit or delay any official act. Nevertheless, facilitation payments are also forbidden, and held in the same sphere as corruption crimes.

Note that, for criminal law purposes, a public official is anyone who, even if without compensation or temporarily, holds a position, employment or a function within a public entity or agency, or mixed-capital/stated-owned company, or works for a company hired to provide public services or perform activities in benefit of the public administration.

In this context, the Codes of ethical conduct for the Federal Top Administration recommends that public officials be forbidden from receiving any gifts, accommodation, transportation, meals and entertainment, with some exceptions, such as items not exceeding a token value of BRL100.

Acts of corruption and bribery are framed not only as crimes, but also as civil and administrative offences. There is no legal provision penalising private commercial bribery, with corruption and bribery being limited to the public sector. Also, both individuals and companies can be held liable for the bribery of a public official in civil and administrative spheres, but criminal liability is subjective and limited to individuals.

2.2 Influence-Peddling

Influence-peddling is penalised under the Criminal Code in Article 332, which establishes imprisonment of two to five years and a fine for anyone who requires, requests, obtains or charges, for himself or herself or others, an advantage or promise of advantage, under the pretext of influencing an act committed by a public official in the exercise of his or her function.

2.3 Financial Record-Keeping

There is no rule specifically requiring a company to disclose violations of anti-bribery or accounting rules. However, all companies must report suspect transactions regarding anti-money laundering rules (Law No 9.613 of 1998).

Also note that, according to Article 299 of the Brazilian Penal Code, it is considered the crime of misrepresentation to omit, in public or private documents, a statement that should have been included, or to insert or make someone insert a false or different statement from what was supposed to be written, with the aim of impairing rights, creating obligations or altering the truth about a legally relevant fact. The penalty for the crime of misrepresentation varies from one to five years imprisonment and a fine if the document is public, and from one to three years imprisonment and a fine if the document is private.

2.4 Public Officials

The Administrative Misconduct Law – applied not only to public officials, but also to private companies/persons that interact with the public sector – penalises acts that could cause losses to the public treasury, run against the principles of the public administration or entail unjust enrichment.

Therefore, the Administrative Misconduct Law prohibits any public official from receiving – directly or indirectly, for themselves or for third parties – assets, money, or any other economic advantage from anyone who may be favoured by it. In this sense, facilitation payments are also prohibited.

Under the Brazilian Criminal Code, in Article 312, misappropriation of public funds by a public official is known as the crime of public embezzlement (*peculato*).

2.5 Intermediaries

In Brazil, anyone who contributes in any way to the occurrence of the act typified as a crime may be held criminally responsible.

According to Brazilian Law, criminal penalties cannot reach individuals other than those who were responsible for committing the wrongdoing, as strict liability is not allowed in the criminal sphere. Hence, there are two ways for an individual to perform a criminal conduct, either by omission or by action. However, criminal liability in Brazil does not depend only for the omission/action to be set forth in law as a crime, but also depends on evidence that an action was committed based on intent or negligence.

In the context of corporate and economic crimes, the category "improper omission crimes" establishes a special form of liability, in which the crimes can only be committed by individuals who have the duty to act, and can act, in order to avoid a wrongdoing, even if the action is committed by a third party. The individual must not only have a legal duty to avoid the wrongdoing but also have the capacity to adopt effective measures to avoid the occurrence of the illicit act. In this respect, directors and officers of companies are individuals who may hold such a legal duty to avoid the occurrence of wrongdoings committed by their subordinates and employees.

Finally, it is worth mentioning that the crimes can be carried out, not only individually, but also by a group of people. In certain instances, there is the typification of the gathering of people to commit crimes, which can configure both the situation in which several people commit the same crime, as well as the criminal association. It is not enough simply to gather these individuals in order to configure the crime of criminal association, as other requirements are necessary, such as the stability of the group, its permanence and the common purpose of committing several crimes.

Article 288 of the Brazilian Penal Code establishes the crime of an organised group or gang as the association of more than three people, in an organised group or gang, with the intention to commit crimes. The penalty varies from one to three years of imprisonment, and it is doubled if the organisation or the gang is armed.

3. Scope

3.1 Limitation Period

Under Brazilian criminal law, the limitation periods are ruled by the maximum penalty for the crime, and are counted from when (i) the crime was effectively consummated, (ii) for ongoing crimes, from the day on which the crime ceased, or (iii) for an attempted crime, the day when the criminal activity ceased.

Also, according to Articles 109 and 114 of the Brazilian Criminal Code, the period ranges from two years (for crimes punished by fines) and from three to 20 years (for crimes punished by detention), depending on the maximum abstract penalty provided for the offence.

In addition, when there is a conviction, the statute of limitation is calculated on the imposed penalty, concerning not only the age of the convict at the time of the sentence, but also any tolling period and the rules established by Articles 109 and 114.

3.2 Geographical Reach of Applicable Legislation

Since Brazil adopts the principle of territoriality, the Brazilian Criminal Code is applied to offences committed within its territory; as provided by Article 5 of the Criminal Code, "Brazilian law applies, without prejudice to conventions, treaties and rules under international law, to criminal offences within Brazilian territory".

It is important to mention that the concept of territory includes not only the land within Brazil's borders, but also the state's ships or aircraft, or those in the service of the Brazilian government. In addition, it is also applied to privately owned ships or aircraft when on the high seas or in international airspace. Brazilian criminal law also applies to offences committed on foreign ships or aircraft when in Brazilian territory.

In addition, the Brazilian Criminal Code provides for extra-territorial jurisdiction, including nationality jurisdiction, in cases listed in Article 7, such as offences over which the Brazilian courts have jurisdiction, even though they are committed abroad.

Even though Brazil has jurisdiction over its nationals who commit offences abroad, it does not include permanent residents of Brazil, who, unlike Brazilian nationals, are subject to extradition. The conditions for establishing nationality jurisdiction are set forth in Article 7, clause II, paragraph 2.

3.3 Corporate Liability

The Brazilian legal system considers criminal liability as personal and non-transferable, being imposed only on the individual who has in any way contributed to a crime either by action or by omission. Therefore, there is no corporate criminal liability under Brazilian law, with the limited exception of environmental crimes.

However, under the Brazilian Anti-Corruption Law (Federal Law No 12.846 of 2014), legal entities can be subject to administrative or civil liability, which normally represents pecuniary penalties and indemnification of damages. It includes strict civil and administrative corporate liability for bribery of foreign and domestic public officials.

Also, a crime committed by an employee or officer of the company may cause civil or administrative liability for the legal person if the act was committed in the interest of the legal entity itself. However, the liability of the company and the type of liability would be assessed independently according to the circumstances of each case.

4. Defences and Exceptions

4.1 Defences

The Brazilian Criminal Code requires that offences be committed either by intent (dolus malus) or by negligence/recklessness (dolus eventualis). Crimes related to bribery and listed above are premised on the individual's dolus, which is why a possible defence would be to allege lack of intention in committing the acts described in the corresponding provisions.

4.2 Exceptions

There are no exceptions to the aforementioned defence.

4.3 De Minimis Exceptions

There are also no de minimis exceptions for the aforementioned offences.

4.4 Exempt Sectors/Industries

No sectors or industries are exempt from the aforementioned offences.

4.5 Safe Harbour or Amnesty Programme

In Brazil, the company's co-operation with investigations or the existence of compliance programmes do not prevent the imposition of sanctions but are taken into consideration and can mitigate penalties to which legal entities can be subject. According to the Brazilian Anti-Bribery Law, "the existence of internal mechanisms and procedures of integrity, audit and incentive for the reporting of irregularities, as well as the effective enforcement of codes of ethics and of conduct within the scope of the legal entity" will be taken into consideration when applying sanctions.

In this respect, a leniency programme may also help the company in obtaining a waiver or reduction of sanctions by one to two thirds, but the Anti-Corruption Law does not expressly provide for total remission of penalties.

The Brazilian leniency programme was launched in 2000, and the Secretariat of Economic Law of the Ministry of Justice (SDE) is the legal agency with the power to negotiate the leniency agreement. Article 35-B of the Brazilian Competition Law authorises the SDE to sign leniency agreements with individuals and corporations in return for their co-operation in pros-

ecuting a case. Also, the leniency provision is supplemented by Article 35-C, which provides that successful fulfilment of a leniency agreement also protects co-operating parties from criminal prosecution under Brazil's economic crimes law (Law No 8.137/90).

To qualify for a leniency programme, the company must be the first to express its willingness to co-operate, admit and cease its participation in the wrongdoing, and to co-operate fully with investigations. It is important to mention that the leniency agreement covers only the facts described at that one investigation. It is also important to note that the company or the individual applying for the leniency programme must be the first to come forward and confess its or his or her participation in the wrongdoing. If a company qualifies for leniency, all directors, officers, and employees of the company who admit their involvement in the illicit act as part of the corporate admission will receive leniency in the same way as the corporation. To benefit from the leniency programme, directors, officers, and employees must sign the agreement along with the company and agree to co-operate with the SDE in the same manner as the company during the investigations. However, if the company is not willing to sign up to a leniency programme, in a situation in which any current or former employee individually applies to the leniency agreement, the company will not be protected. A leniency agreement shelters administratively and criminally the directors, officers, and employees of the co-operating company if those individuals sign the agreement along with the firm and fulfil the requirements provided in the law.

Although it is not a legal requirement, the SDE can also involve the Public Prosecutor Offices (both at the Federal and State levels, when applicable) in the execution of the Leniency Agreement.

In this context, it is also important to mention the "plea-bargain agreements" (*colaboração premiada*), which gained strength with the enactment of Law No 12.850 of 2013. According to Brazilian Law, the institution is an agreement executed between defendants and prosecutors, granting benefits to the individual who effectively and voluntarily collaborates. The Law also establishes that the judge cannot be part of the negotiations, and the agreement must be handled directly between the defendant and the public prosecutor or the police. After the agreement is settled and becomes an official document containing the agreement itself and the statements provided by the defendant, it is sent to the judge.

Once the agreement is approved by the judge, the defendant can be required to give as many testimonies as the authorities consider needed. Also, if the defendant lies in court, the benefits of the agreement might be cancelled. In addition, any plea agreement which involves authorities with special jurisdiction, such as ministers, the president, and senators, for example, is conducted directly by the Brazilian Supreme Court of Justice.

5. Penalties

5.1 Penalties on Conviction

Under the Brazilian Criminal Code, individuals who commit acts of corruption can be subject to penalties of a fine and up to 12 years of imprisonment.

In addition to that, under the Brazilian Anti-Corruption Law, legal entities can be subject to administrative and judicial penalties.

Administrative penalties could be (i) a fine of 0.1% to 20% of the gross revenue in the last year prior to the start of the administrative proceedings (if these criteria cannot be used, the fine will range from BRL6,000 to BRL60 million), and (ii) publication of the condemnatory decision at the entity's own expense.

Judicial penalties include:

- prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or institutions controlled by the government, for up to five years;
- loss of assets, rights or valuables representing the advantage or profit, directly or indirectly, obtained from the wrongdoing;
- partial suspension or interdiction of the legal entity's activities; and
- compulsory dissolution of the legal entity.

5.2 Guidelines Applicable to the Assessment of Penalties

The Brazilian Penal Code has adopted the three-phase criterion for sentencing, ie, the judge considering the specific case, when deciding on the sentence to be imposed on the defendant, must go through three phases:

- the first phase, in which the basic sentence will be determined;
- the second phase, in which the mitigating and aggravating circumstances will be determined; and, finally,
- the third and final phase, which will be responsible for the application of the causes of increase and decrease of the penalty, so that, in the end, the total sentence to be served by the defendant is reached.

It should be noted that repeated offences (recidivism) are an aggravating circumstance, which could increase the final penalty.

6. Compliance and Disclosure

6.1 National Legislation and Duties to Prevent Corruption

There is no general legal duty for a company to establish a compliance programme. However, when contracting with the government, companies may be required to have an integrity programme implemented in order to participate in public bids.

The existence of a compliance programme does not eliminate judicial or administrative liability for legal entities. However, it can mitigate sanctions to which legal entities may be subject.

6.2 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

There is no legal obligation to disclose violations of anti-bribery and anti-corruption provisions. The Brazilian anti-corruption law allows firms to self-disclose voluntarily any violations of the law in order to enter into leniency agreements with the authorities. However, it is important to emphasise that companies should consider and weigh the possible reputational effects that can arise from this communication.

6.3 Protection Afforded to Whistle-Blowers

Resolution No 3/2019 of the General Comptroller's Office approved the General Measures to Safeguard the Identity of Whistle-blowers. Through the Fala.BR platform (Integrated Platform for Ombudsman and Access to Information) of the General Comptroller's Office, it is possible for any citizen to request access to public information, give compliments or make complaints, forward suggestions, suggest ideas to debureaucratise the public service, make requests or register denouncements with their identity protected.

Note that, even though Brazil already had provisions on leniency agreements, offering benefits to individuals or companies directly involved in illicit acts and willing to co-operate with the authorities, there was no whistle-blower protection until Federal Law 13.964 of 2019 (Anti-crime Law). Article 15 of the Brazilian Anti-crime Law provides a list of incentives and protections to whistle-blowers who report administrative misconduct or criminal activities. In addition, the law is applied to whistle-blowers who report any fraud related to misconduct that harms the public interest.

6.4 Incentives for Whistle-Blowers

Law No 13.608/18 regulates the issue of telephone denouncements and financial rewards for whistle-blowers who assist in police investigations. The payment as a form of reward aims to protect public assets and optimise the use of available resources for the investigation.

The Brazilian Anti-crime Law not only offers a monetary reward to whistle-blowers (5% of what the government recovers from the illicit acts), but also provides four different protections to the whistle-blowers, which are:

- protection against retaliation;
- a set of protections arranged by the Brazilian Victim and Witness Protection Act (according to Federal Law No 9.807 of 1999);
- immunity from criminal and civil liability; and also
- guarantee of confidentiality on the information provided by the whistle-blower.

However, even though there is the protection of confidentiality, the Anti-crime Law does not provide for the anonymity of the whistle-blower; moreover, it allows disclosure of the individual's identity if the information is relevant to the investigation or to the public interest.

The Anti-crime Law also protects the individual against retaliation, and states that if retaliation takes place, the whistle-blower can be entitled to double repayment for damages caused, as well as punitive damages. However, these consequences will only strike those responsible for the retaliatory acts after a court order in a lengthy judicial proceeding.

The Brazilian Anti-crime Law offers whistle-blowers immunity from civil and criminal liability for the information provided, but it is also important to clarify that the protection is not applied to the whistle-blower who reports false information.

6.5 Location of Relevant Provisions Regarding Whistle-Blowing

The so-called "Anti-crime Package" (Law No 13.964/2019) of the Federal Government refers to a set of changes in Brazilian legislation that aims at increasing the effectiveness in combating organised crime, violent crime and corruption.

7. Enforcement

7.1 Enforcement of Anti-bribery and Anti-corruption Laws

There is civil, criminal, and administrative enforcement of anti-bribery and anti-corruption, such as:

- the Criminal Code (Legislative Decree No 2.848 of 1940),
- the Public Procurement Law (Law No 8.666 of 1993),
- the Administrative Misconduct Law (Law No 8.429 of 1992),
- the Anti-corruption Law (Law No 12.846 of 2013), and
- the Anti-corruption Decree (Decree No 8.420 of 2015).

7.2 Enforcement Body

In Brazil, several public bodies and entities have the authority to carry out preventive and repressive actions regarding acts of corruption in the administrative, civil, and criminal spheres. The Public Prosecutor's Office (MP) is responsible for protecting public and social property at the federal and state levels. The Federal Accounting Court (TCU) and its state counterparts have the duty to supervise the use of public resources in general. The Attorney General's Office (AGU) has as its mission to defend the interests of the Federal Government in and out of court, including against acts of corruption. In addition, Law No 10.683/2003 created the General Comptroller's Office (CGU) as an advisory body to the head of the Federal Executive Branch in matters related to administrative morality. There are, therefore, four federal entities competing for space in the control of corruption.

In addition to Special Justices or Special Courts (Military and Electoral Courts), there are Federal and State Justices in Brazil. In general, the Federal Justice has jurisdiction over crimes involving the interests of the Federal Government and other crimes indicated by Article 109 of the Constitution. Therefore, the competence of the State Justice is residual.

7.3 Process of Application for Documentation

Brazilian Criminal Record Certificates can be issued by either the Brazilian state's Police, in which the individual's personal documents are registered, or through the website of the Federal Police Department.

7.4 Discretion for Mitigation

Mitigation is only possible if expressly provided by the law.

7.5 Jurisdictional Reach of the Body/Bodies

In general, the Federal Justice has jurisdiction over crimes involving the interests of the Federal Government and other crimes indicated by Article 109 of the Constitution. The competence of the State Justice is residual. The Federal Public Prosecutors act in the Federal Courts, investigating and prosecuting federal crimes, such as money laundering, banking frauds or crimes committed by Internal Revenue employees, Federal Police officers or by personnel of any federal agency or department. The State Public Prosecutors act in the State Courts and investigate and prosecute the offences not framed in the other courts.

7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

Operation Car Wash is an ongoing investigation being carried out by the Federal Police and the Federal Public Prosecutor's Office since March 2014. According to the Operation's task force, investigations implicate administrative members of the state-owned oil company Petrobras, politicians from Brazil's largest parties, Deputies, Senators, state governors, and businessmen from Brazilian's largest companies. All the investigative measures to uncover a multi-million-dollar money laundering scheme were only possible due to the co-operation and exchange of information between Brazilian and foreign authorities, resulting in more than a thousand warrants of various types.

The operation is the largest money laundering and corruption investigation Brazil has ever had.

7.7 Level of Sanctions Imposed

The Car Wash Operation has to date encompassed 130 complaints filed, 178 criminal actions, 209 collaboration agreements and 16 leniency agreements. There have been 172 convictions - in the first and second instances - and BRL4.3 billion has been returned to the public treasury. Penalties of imprisonment applied to individuals have been above the minimum set forth for the correspondent crimes. However, it is also important to stress that many individuals have had their sentences reduced or even received exemption due to their effective collaboration with the investigation.

8. Review and Trends

8.1 Assessment of the Applicable Enforced Legislation

According to the OECD's report of March 2018, Brazil has adhered to 38 OECD Legal Instruments, such as:

- the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions;
- the Recommendation of the Council for Development of Co-operation between Actors on Managing the Risk of Corruption; and
- the Declaration on the Fight Against Foreign Bribery – Towards a New Era of Enforcement.

8.2 Likely Future Changes to the Applicable Legislation of the Enforcement Body

In Brazil, the trend has been an increase in penalties and a decrease in impunity. Likewise, there has been a movement by the courts to impose higher and more severe penalties.

Related to this trend, the "anti-crime" package, presented by former Justice Minister Sergio Moro in December 2019, included some measures to deal with issues in connection with Brazilian criminal law and procedure, establishing proposals against corruption, organised crime and crimes committed with violence. These measures include the following:

- measures proposing more severe penalties and the system of enforcement, involving not only an increase of the penalties, but also imposing barriers to the regimen progression and establishing new criminal offences (for example, the implementation of the aggravating circumstance to the crime of resistance, which may become one of the harshest crimes in the Brazilian Penal Code) - the project also proposes the application, in some cases, of a full closed regimen for serving of the sentence, regardless of the amount of penalty applied;
- measures establishing the early execution of the sentence after judgment in the second instance, or after conviction rendered by the Jury Court;
- measures related to self-defence in connection with crimes committed by police officers or public security in general (circumstance already provided by the current Brazilian Penal code), regarding the flexibility of their punishment for fortuitous excess, allowing the judge to reduce the penalty or fail to apply it, if the excess comes from "excruciating fear, surprise or violent emotion";
- measures to introduce the "Plea-Bargaining" institution, which seeks to apply a sentence articulated by an agreement between the accused, the defence and the Prosecutor's Office, as long as the defendant acknowledges his or her guilt, among other specific requirements, and the institutionalisation of the figure of the whistle-blower;
- pro-investigative measures, which involve the creation of:
- a National Genetic Profile Bank, to submit obligatorily those convicted of felony crimes, even without a final decision, to DNA extraction; and
- a National Multi-biometric and Fingerprint Bank, with the purpose of storing biometric, fingerprint and, when possible, iris, face and voice data to support criminal investigations, including temporary prisoners; and
- measures that allow the modification of the jurisdiction, which involves determining that when ordinary crimes are investigated in connection with electoral crimes, the procedure must be transferred to the ordinary justice, and not submitted to the electoral justice.

Felsberg Advogados is a full-service law firm founded in 1970 and defined by its ability to combine experience, tradition and excellence with efficient, fast and focused service, offering innovative solutions in a constantly changing world. The firm's multidisciplinary white-collar crime and corporate investigations team is highly qualified to advise clients in all areas related to white-collar criminal law, in addition to identifying and dealing with all legal issues related to corporate integrity. The firm's practice covers a wide range of services, including criminal defence before police and judicial authorities, filing of private criminal lawsuits, follow-up of search and seizure procedures, staff training on dealing with police and related authorities, and corruption, money laundering and bidding-fraud investigations. Felsberg Advogados conducts internal investigations in companies and has worked on the main operations and investigations carried out by Brazilian authorities in recent years. The firm also assists foreign law firms before the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ).

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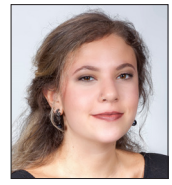

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